

IN THE UNITED STATES DISTRICT COURT FILED
BILLINGS DIV.

FOR THE DISTRICT OF MONTANA 2009 APR 27 PM 2 09

BILLINGS DIVISION

PATRICK E. DUFFY, CLERK

BY _____

DEPUTY CLERK

ROBERT ADELL BROWN,

)

CV-07-26-BLG-RFC

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Plaintiff,

)

)

vs.

)

)

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

RANDY GORMAN,

)

)

Defendant.

)

)

On February 9, 2009, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends this Court deny Defendant's Motion to Dismiss Complaint Pursuant to F.R.Civ.P. 37(d) for Plaintiff's Failure to Appear at his Deposition. (*Doc. 26*).

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the February 9, 2009 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to


review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety. Plaintiff acknowledges that he failed to appear for his deposition and that disobedience was not outside his own control. However, it does not appear that this discovery violation will necessarily interfere with a rightful decision of this case. Less drastic sanctions are available.

Accordingly, **IT IS HEREBY ORDERED** Defendant's Motion to Dismiss Complaint Pursuant to F.R.Civ.P. 37(d) for Plaintiff's Failure to Appear at his Deposition (*Doc. 26*) is **DENIED**.

The Clerk of Court shall notify the parties of the making of this Order.

DATED the 21 day of April, 2009.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE